

IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

MITUTOYO AMERICA CORPORATION,)	
)	
)	
Petitioner,)	
)	
v.)	No. 21 TT 133
)	
THE ILLINOIS DEPARTMENT OF REVENUE,)	Judge Brian F. Barov
)	
Respondent.)	

DEPARTMENT’S CROSS MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent, Illinois Department of Revenue (hereinafter referred to as the “Department”), by and through its attorney, and hereby moves this Tribunal for the entry of summary judgment in its favor and against the Petitioner, Mitutoyo America Corporation (hereinafter referred to as the “Taxpayer”), pursuant to the Illinois Independent Tax Tribunal Rules at 86 Ill. Adm. Code 5000.300(d) and Section 2-1005 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1005. In support of its Motion for Summary Judgment, the Department states as follows:

I. INTRODUCTION

The matter before the Tribunal is based upon a Petition filed by the Taxpayer seeking to overturn the Department’s Notice of Claim Denial for the Taxpayer’s amended IL-1120 (“IL-1120-X) tax return seeking a refund claim for tax year ending December 31, 2016 (“Year at Issue”). The Taxpayer’s Petition further seeks to ask this Tribunal to treat Taxpayer’s IL-1120-X return for the Year at Issue, as timely filed. For all the reasons set forth in the Department’s Motion for Summary Judgment, the Department moves the Tribunal to uphold the Department’s Notice of Claim Denial and to find that the Taxpayer’s claim for refund was untimely filed and barred by

the statute of limitations pursuant to Section 911(a) of the Illinois Income Tax Act (“IITA”), 35 ILCS 5/101 *et seq.*

II. STANDARD FOR SUMMARY JUDGMENT

A motion for summary judgment can be the appropriate method for disposing of the Taxpayer’s claim in this case. A motion for summary judgment is appropriate where the pleadings, affidavits, and other documents on file show that there is no genuine issue as to any material fact on a particular issue and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c); *People ex rel. Dep’t of Revenue v. National Liquors Empire, Inc.*, 157 Ill. App. 3d 434, 437, 510 N.E.2d 495, 498 (4th Dist. 1987). Summary judgment is also appropriate where the parties agree on the facts but dispute the construction of an applicable statute. *Bezan v. Chrysler Motors Corp.*, 263 Ill. App. 3d 858, 864, 636 N.E.2d 1079, 1083 (2nd Dist. 1994). In this case at bar, there is no genuine issue of material fact presented in this motion. The only disputed issue in this case is a legal issue and therefore presents a question of law appropriate for summary judgment. 735 ILCS 5/2-1005(c).

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The Taxpayer filed an IL-1120-X for the Year at Issue. *See* Exhibit A, 2016 IL-1120-X and Letter of Certification.
2. The date stamp on the IL-1120-X for the Year at Issue, shows it was received on October 21, 2020, in the Springfield Payment Center. *See* Exhibit A, 2016 IL-1120-X and Letter of Certification.
3. The filing deadline for the IL-1120-X for the Year at Issue, was Friday, October 16, 2020. *See* 35 ILCS 5/911(a) and the corresponding regulations at 86 Ill. Adm. Code 100.9410; the 2016 IL-1120-X Instructions and Exhibit B, the Notice of Claim

Denial and Explanation of Audit Adjustments and Letter of Certification.

4. The Department's file containing the IL-1120-X for the Year at Issue did not contain an envelope. *See* Exhibit C, Affidavit of Mike Dixon.
5. The date stamp on the IL-1120-X for the Year at Issue is a date stamp used in the Springfield Payment Center located in a window of the lobby of the Willard Ice Building in Springfield, Illinois. *See* Exhibit D, Affidavit of Philip James.
6. The Springfield Payment Center was open for business and staffed during the Covid-19 pandemic and, more specifically, was open during regular business hours in October of 2020. *See* Exhibit D, Affidavit of Philip James.
7. Additionally, the Springfield Payment Center remained open even during the brief time the offices at the Illinois Department of Revenue were closed to the public because of the Covid-19 pandemic. *See* Exhibit D, Affidavit of Philip James.

IV. MEMORANDUM OF LAW AND ARGUMENT

There is no dispute between the parties that the Taxpayer's IL-1120-X for the Tax Year at Issue (hereinafter referred to as the "Return") to be considered timely filed, had to be filed no later than Friday, October 16, 2020. The parties' dispute is the date the Return was filed with the Department. The Return was date stamped as received in the Springfield Payment Center on Wednesday, October 21, 2020, three business days after the filing deadline. Based upon the date received stamp on the Return and the absence of an envelope for the Return showing any other date for filing the return, the Department issued the Notice of Claim Denial. As set forth herein, the undisputed material facts and the corresponding case law support the Department and the Notice of Claim Denial must be upheld and the claim for refund is barred by the statute of limitations.

A. Taxpayer's Return and claim for refund was filed after the statutory limitations period expired.

The IITA requires that corporations file their returns by the fifteenth day of the fourth month following the close of the taxable year with the allowance of the automatic six-month extension. *See* 35 ILCS 5/505(a)(1), 86 Ill. Adm. Code 100.5000(a)(2), 86 Ill. Adm. Code 100.5020(b) and the 2016 Instructions for filing a Form IL-1120 (pg. 1) and Form IL-1120-X (pg. 1). The Return itself states on its face that the Taxpayer is seeking a State change and indicates the close of the Taxpayer's taxable year. *See* the Taxpayer's 2016 IL-1120-X attached hereto as Exhibit A. Having established the original filing date, a taxpayer can then calculate the deadline for filing an amended return seeking a refund. The IITA, corresponding regulations and tax return instructions provide the deadline and directives for the timely filing of amended returns and refund claims. The IITA sets forth the statute of limitations period for filing claims for refund of Illinois income tax. 35 ILCS 5/101 *et seq.*

Section 911(a) of the Illinois Income Tax Act (IITA) provides in relevant part:

Sec.911. Limitations on Claims for Refund.

- (a) In general. Except as otherwise provided in this Act:
 - (1) A claim for refund shall be filed not later than 3 years after the date the return was filed (in the case of returns required under Article 7 of this Act respecting any amounts withheld as tax, not later than 3 years after the 15th day of the 4th month following the close of the calendar year in which such withholding was made), or one year after the date the tax was paid, whichever is the later; and
 - (2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period. be sent by mail to the person's last known address.
- (b) . . .

35 ILCS 5/911(a).

The Department's regulations also provide in relevant part:

Section 100.9410. Limitations on Claims for Refund (IITA Section 911)

(a) In General

Except as otherwise provided in this Section, *no credit or refund shall be allowed or made with respect to any year unless a claim for refund or credit was filed on or before the later of:*

1) *3 years after the date the return was filed or, in the case of returns required under Article 7 of the IITA respecting any amounts withheld as tax, the 15th day of the 4th month following the close of the calendar year in which such withholding was made); or*

2) *one year after the date the tax was paid.* (IITA Section 911(a))

3) **Consequence of Failing to File a Timely Refund Claim.** In the case of any overpayment, the Department may grant a credit or refund of the amount of such overpayment within the applicable period of limitations for a claim for refund (see IITA Section 909(a)). Failure of a taxpayer to file a refund claim before the expiration of the limitations period for a taxable year **precludes the Department from granting a credit or refund of any overpayment for that taxable year after the date of expiration.** The expiration of the period for filing a refund claim for a taxable year:

A) does not preclude the taxpayer from asserting any adjustments to net income or credits to the extent the adjustments would reduce or eliminate a deficiency asserted by the Department for that taxable year. (See *Lewis v. Reynolds*, 284 U.S. 281 (1932).)

B) does not preclude the taxpayer from asserting any adjustments to the amount of net loss incurred under IITA Section 207 (except as provided in subsection (g) of this Section for losses incurred in taxable years ending prior to December 31, 2002) or of any credit earned in that taxable year, or the amount of net loss deduction under IITA Section 207 or of any credit carryforward that is properly taken in that taxable year, in order to compute the amount of net loss deduction or credit carryforward allowable in another taxable year, so that a timely refund claim may be filed for that other taxable year or a deficiency for that other taxable year may be reduced or eliminated. (*Springfield Street Railway Co. v. U.S.*, 312 F.2d 754 (Ct. Cl. 1963).)

4) See subsection (e) regarding when a return is deemed filed.

86 Ill. Adm. Code 100.9410 (Emphasis Added).

The 2016 IL-1120-X Instructions provide the filing deadlines and state in pertinent part:

As a result of federal filing due date changes, the Illinois filing and payment due dates for some Form IL-1120 filers have changed. If your tax year **begins** on or after January 1, 2016, **and**

your tax ends on a date other than June 30, the original filing and payment due date has changed to the 15th day of the 4th month following the close of the taxable year. In addition, we now grant an automatic extension of time to file your tax return of six months.

How long do I have to amend my return?

The amount of time you have to amend your return depends on whether your Form IL-1120-X is being filed to report a state or federal change.

State change – If your change creates or increases the Illinois net loss for the year, you must file Form IL-1120-X showing the increase in order to carry the increased loss amount to another year.

If your change decreases the tax due to Illinois and you are entitled to a refund or credit carryforward, you must file Form IL-1120-X within

- three years after the due date of the return (including extensions)
- three years after the date your original return was filed, or
- one year after the date your Illinois tax was paid, whichever is latest.

If your change increases the tax due to Illinois, you should file Form IL-1120-X and pay the tax, penalty, and interest promptly.

Illinois Form IL-1120-X Instructions (Pg. 1 and 3) (Emphasis in the original).

The IITA also provides when a return is deemed filed. Section 911(e) provides:

(e) Timely return deemed filed. For purposes of this section a tax return filed before the last day prescribed by law for the filing of such return (including any extensions thereof) shall be deemed to have been filed on such last day.

35 ILCS 5/911(e).

In addition, the IITA and the regulations allow the regulated taxpayer community the ability to extend the applicable statute of limitations if more time is needed to timely file a return.

The IITA at Section 911(c) states:

(c) Extension by agreement. Where, before the expiration of the time prescribed in this section for the filing of a claim for refund, both the Department and the claimant shall have consented in writing to its filing after such time, such claim may be filed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In the case of a taxpayer who is a partnership, Subchapter S corporation, or trust and who enters into an agreement with the Department pursuant to this subsection on or after January 1, 2003, a claim for refund may be filed by the partners, shareholders, or beneficiaries of the taxpayer at any time prior to the expiration of the period agreed upon. Any refund allowed pursuant to the claim, however, shall be limited to the amount of any overpayment of tax due under this Act that results from recomputation of items of income, deduction, credits, or other amounts of the taxpayer that are taken into account by the partner, shareholder, or beneficiary in computing its liability under

this Act.

35 ILCS 5/911(c).

The Department's corresponding regulations regarding extensions states:

c) Extension by Agreement

1) When, before expiration of the time otherwise prescribed in this Section for the filing of a claim for refund, the Department and the taxpayer have consented in writing to the filing after that time, then a claim may be filed at any time prior to the expiration of the period agreed upon.

86 Ill. Adm. Code 100.9410(c).

The statute, corresponding regulations and instructions provide a plethora of information to the regulated community informing them of the filing deadlines and consequences for failure to file timely. While the IITA provides the ability for a taxpayer to extend the limitations, in this case not only did the Taxpayer fail to timely file, but it also did not seek to avail itself of the extension provision provided in the IITA.

The purpose of a statute of limitations period is to discourage the presentation of stale claims and to encourage diligence in the bringing of actions. *Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 265-266, 746 N.E.2d 254, 260 (IL Sup. Ct. 2001). Statutes of limitation and repose represent society's recognition that predictability and finality are desirable, indeed indispensable, elements of the orderly administration of justice that must be balanced against the right of every citizen to seek redress for a legally recognized wrong. *Id.* at 195 Ill. 2d at 266, 746 N.E.2d at 260.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Wisniewski v. Kownacki*, 221 Ill. 2d 453, 460, 851 N.E.2d 1243, 1247 (IL Sup. Ct. 2006); *See also, Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (IL Sup. Ct. 1990). The best indication of that intent is the language of the statute, given its plain and ordinary

meaning. *Wisniewski*, 221 Ill. 2d at 460, 851 N.E.2d at 1247. Where the language is clear and unambiguous, the statute must be applied without resort to other aids of statutory construction. *Id.* A court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions the legislature did not express. *Kraft*, 138 Ill. 2d at 189, 851 N.E.2d at 661. A statute should be construed so that no word or phrase is rendered superfluous or meaningless. *Id.*

The Illinois legislature has set forth the statutory limitation period for filing of a refund claim. In addition, the Department, in enforcing the IITA, has advised the regulated community in its regulations as well as its tax return instruction forms as to the limitations period for filing a refund as well as the provision for seeking extensions. The Department's regulations and instruction forms have the same force and effect as the statutory provisions. *Craftmaster, Inc. v. Illinois Dep't of Revenue*, 269 Ill. App. 3d 934, 940-941, 647 N.E.2d 607, 611 (4th Dist. 1995); *See also* 35 ILCS 5/1501(19).

In the case at bar, the Taxpayer had ample notice as to the limitations period to file its refund claim, yet the Taxpayer failed to file the Return timely. The statute of limitations period is not simply a goal or recommendation but a mandated statutory deadline for a party to act. As the *Sundance Homes, Inc.* court stated, "statutes of limitations and repose represent society's recognition that predictability and finality are desirable, indeed indispensable, elements of the orderly administration of justice." *Sundance Homes, Inc.* at 195 Ill. 2d at 266, 746 N.E.2d at 260. Therefore, the Illinois legislature's stated mandate cannot be ignored or adjusted because the Taxpayer was only a few business days late in filing its Return. Whether a return was filed a few business days late or six months late, the IITA must be upheld as written without any exceptions or conditions.

The statutory scheme is clear and unambiguous. The IITA coupled with the corresponding regulations and tax form instructions informs the regulated community of their obligations under the IITA. Thus, the Taxpayer failed to timely file its 2016 amended IL-1120 tax return. The consequence of failing to file a timely return precludes the Department from granting any credit or refund for that taxable year after statute of limitations expired. Thus, the Taxpayer's claim for refund is barred by the statute of limitations period in IITA Section 911(a).

B. The Department's date received stamp confirms the date the Return was filed.

The deadline for the Taxpayer to file a claim for refund in this case was October 16, 2020. *See* the Notice of Claim Denial and Explanation of Audit Adjustments attached hereto as Exhibit B. The Department's Records Management Division has provided a true and accurate copy of the Return filed. *See* the Taxpayer's 2016 IL-1120-X attached hereto as Exhibit A. The date received stamp shows the Return as received by the Department on October 21, 2020, at the Springfield Payment Center. *See* Exhibit A. The Springfield Payment Center is a payment window in the lobby of the Willard Ice Building located in Springfield, Illinois. *See* the Affidavit of Philip James attached hereto as Exhibit D. This payment window was open for business and staffed during the Covid-19 pandemic and in October 2020. *See* Exhibit D. The payment window was open at all times, even during the brief time the Department was closed to the public due to the Covid-19 pandemic. *See* Exhibit D.

The Department as part of its due diligence made a good faith effort search for any envelope that might have been included with the Return to determine if the filing date was any other date than what was marked on the Return. *See* Affidavit of Mike Dixon attached hereto as Exhibit C. Upon retrieving the file from storage that contained the Return at issue, Mr. Dixon confirmed that no envelope was in the file. *See* Exhibit C.

Accordingly, without any envelope, the date stamped received of October 21, 2020, on the Return is the filing date as recognized by the Department's Records Management Division and certified by Department's records officer. *See* Exhibit A.

C. The Statute on Statutes is inapplicable because of the absence of an envelope.

The Taxpayer's Petition asks this Tribunal to ignore the plain language of the IITA and apply the Statute on Statutes, 5 ILCS 70/0.01 *et seq.*, also known as the Illinois mailing statute (for purposes of this Motion the Statute on Statutes will be referred as the Illinois mailing statute), to support Taxpayer's claim that a timely return was filed. However, a review of the statute itself and the cases interpreting the statute do not support the Taxpayer's position.

The Statute on Statutes at Sec. 1.25 states in relevant part:

Sec. 1.25. Unless an Act otherwise specifically provides, any writing of any kind or description required or authorized to be filed with, and any payment of any kind or description required or authorized to be paid to, the State or any political subdivision thereof, by the laws of this State:

- (1) if transmitted through the United States mail, shall be deemed filed with or received by the State or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other wrapper containing it;
- (2) if mailed but not received by the State or political subdivision, or if received but without a cancellation mark or with the cancellation mark illegible or erroneous, shall be deemed filed with or received by the State or political subdivision to which it was required or authorized to be directed on the date it was mailed, but only if the sender establishes by competent evidence that the writing or payment was deposited, properly addressed, in the United States mail on or before the date on which it was required or authorized to be filed or was due. In cases in which the writing or payment was mailed but not received, the sender must also file with, or pay to, the State or political subdivision to which the writing or payment was required or authorized to be directed, a duplicate writing or payment within 30 days after written notification is given to the person claiming to have sent the writing or payment, by the State or political division to which the writing or payment was required or authorized to be sent, of its non-receipt of the writing or payment.

If a writing or payment is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent

evidence that the writing or payment was mailed. The date of registration, certification or certificate shall be deemed the postmarked date.

5 ILCS 70/1.25.

In the case of *In re Application of the County Treasurer v. Weyerhaeuser Mortgage Company*, a tax redemption case, the court held that absent the envelope itself, the Illinois mailing statute was inapplicable. 57 Ill. App. 3d 550, 554, 373 N.E.2d 870, 873 (1st Dist. 1978). The court stated that neither the front or back of the envelope was introduced into evidence and at trial the evidence showed that the envelope itself was lost. *Id.* at 554, 873. Without an envelope there could be no determination of a cancellation mark, let alone whether the cancellation mark was illegible or erroneous. *Id.* Therefore, the mailing statute did not apply because of the absence of any envelope. *Id.*

In a more recent tax redemption case of *Huffman v. Klopfer*, the court agreed with the interpretation of the Illinois mailing statute as reasoned by the court in *In re Application of the County Treasurer*, 265 Ill. App. 3d 485, 492, 637 N.E.2d 679, 683 (1st Dist. 1994). In *Huffman*, the court was tasked with applying the Illinois mailing statute when the envelope existed and was introduced into evidence. The issue in this case was that the envelope had a legible postmark which was dated two days after the filing deadline for the tax redemption. The trial judge in applying the mailing statute, stated that the testimony presented at hearing was credible and that the testimony satisfied Section 2 of the mailing statute by proving that the postmark on the envelope was erroneous. *Huffman*, 265 Ill. App. 3d at 489, 637 N.E.2d at 682.

However, on appeal, the *Huffman* court disagreed with the trial court's interpretation of the mailing statute and stated that testimony standing alone fell short of the amount of proof needed to find a postmark erroneous. *Id.* at 490, 682. The court further opined that proof of the date of mailing is insufficient to trigger the exception to the general rule that the date of the postmark is

deemed the date of filing. *Id.* at 492, 683. Therefore, the *Huffman* court opined that while testimony is allowable, it is used *in conjunction with* the envelope in determining whether a postmark is either illegible or erroneous. The *Huffman* case does not stand for the proposition that testimony *alone* can constitute competence evidence of the date of filing. *See also, Wickman v. Ill. Property Appeal Board*, 387 Ill. App. 3d 414, 418, 899 N.E.2d 1227, 1230 (2nd Dist. 2008) (holding that the affidavit in conjunction with the envelope shown to be properly addressed satisfied Section 2 of Section 1.25 of the Statute on Statutes).

In the case at bar, no envelope exists. Therefore, the absence of the envelope makes the Illinois mailing statute inapplicable. Moreover, Section 2 of the Illinois mailing statute defines what constitutes competence as follows:

If a writing or payment is sent by United States registered mail, certified mail or certificate of mailing, **a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence** that the writing or payment was mailed. The date of registration, certification or certificate shall be deemed the postmarked date.

5 ILCS 70/1.25(2) (Emphasis added).

The plain language of the Illinois mailing statute does not provide that testimony or an affidavit of the sender constitutes competence evidence. Therefore, testimony or an affidavit is not competent evidence as defined in the Illinois mailing statute. The statute is clear and unambiguous, and a court is not at liberty to depart from the plain meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express. *Kraft*, *infra* at 189, 661. As the *Huffman* court stated, a party who misses a clearly prescribed deadline for a redemption makes the redemption a nullity. *Huffman* *infra* at 492, 684. Likewise, in the instant matter, the Taxpayer missed a clearly prescribed tax deadline for filing its 2016 IL-1120 tax return which makes the tax return a nullity and any claim for refund time barred. To rule otherwise,

would effectively render meaningless the statutory deadlines contained in the IITA for timely filing which is contrary to the canons of statutory construction in Illinois.

D. The Taxpayer has the burden to prove that the Return was timely filed.

The Taxpayer has the burden to file a timely return. 5 ILCS 505(a)(1). Proof of filing is a book and record like any other book and record required to be maintained by Taxpayers. The income tax regulations provide that a Taxpayer shall keep books and records sufficient to substantiate all information reported on any income tax, withholding or information return required by the IITA. *See* 86 Ill. Adm. Code 100.9530(a). Proof of filing a return is no different from any other record required to be maintained by the Taxpayer. An affidavit or testimony *alone* is not sufficient to establish that the return was timely filed. A Taxpayer must substantiate that a return was timely filed with documentary evidence. *See Copilevitz v. Illinois Dep't of Revenue*, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207 (IL Sup. Ct. 1968). Testimony alone is not sufficient to overcome a taxpayer's burden to establish that a return was timely filed. *See A.R. Barnes & Co. v. Illinois Dep't of Revenue*, 173 Ill. App. 3d 826, 833-834, 527 N.E.2d 1048, 1053 (1st Dist. 1988); *See also PPG Industries Inc. v. Illinois Dep't of Revenue*, 328 Ill. App. 3d 16, 33, 765 N.E.2d 34, 43-44 (1st Dist. 2002). A taxpayer must present documentary evidence which is consistent and probable and identified by books and records. *A.R. Barnes & Co*, 173 Ill. App. 3d at 833-834, 527 N.E.2d at 1053; *PPG Industries, Inc.*, 328 Ill. App. 3d at 33, 765 N.E.2d at 43-44.

In the instant matter, the Department established the filing date of the Return by submitting the official record of the Return certified by the Records Management Division. Having established the filing date, the Taxpayer must produce documentary evidence to support a filing date other than October 21, 2020. No such evidence exists, and the Taxpayer has not submitted an envelope or any other competent evidence showing a filing date other than October 21, 2020.

Therefore, any testimony or affidavits alone, will not be sufficient to overcome the received date stamp on the Return which shows the Return as untimely filed. Therefore, the Return is barred by the statute of limitation and precludes the Department from issuing the Taxpayer a credit or refund. 35 ILCS 5/911(a) and 86 Ill. Adm. Code 100.9410(a)(3).

V. CONCLUSION

For the reasons stated above, the Department requests this Tribunal grant the Department's Motion for Summary Judgment and uphold the Notice of Claim Denial as the statute of limitations bars the Return and claim for refund.

Respectfully submitted,
Illinois Department of Revenue,

By: /s/ Valerie A. Puccini

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